

EXHIBIT 4

RECEIVED

DEC - 7 2006

Dav. Co. Chancery Co.

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
 TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE, by and through  
 Paul G. Summers, Attorney General and  
 Reporter of the State of Tennessee,

Plaintiff,

v.

BROWN & WILLIAMSON TOBACCO  
 CORPORATION; LIGGETT GROUP INC.;  
 LORILLARD TOBACCO COMPANY;  
 PHILIP MORRIS INCORPORATED;  
 R.J. REYNOLDS TOBACCO COMPANY;  
 UNITED STATES TOBACCO COMPANY;  
 UNITED STATES TOBACCO  
 MANUFACTURING COMPANY INC.; and  
 UNITED STATES TOBACCO SALES AND  
 MARKETING COMPANY INC.,

Defendants.


Civil Action No. 98-3776-I

ORDER

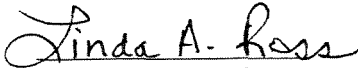
This matter came before the Court on: (1) the Motion of the State of Tennessee for Declaratory Order and Enforcement Order Under the Master Settlement Agreement (filed April 19, 2006); (2) Defendants Original Participating Manufacturers' Motion to Compel Arbitration and to Dismiss or Stay Motion of the State of Tennessee for Declaratory Order and Enforcement Order Under the Master Settlement Agreement (filed September 22, 2006); and (3) Defendants Certain Subsequent Participating Manufacturers' Joinder in Motion to Compel Arbitration and to Dismiss or Stay Motion of the State of Tennessee for Declaratory Order and Enforcement Order Under the Master Settlement Agreement (filed September 22, 2006).

The Court having received extensive briefing on these matters and having conducted oral argument and considered the exhibits filed by the parties, it is hereby ORDERED that, in accordance with the ruling delivered by the Court from the bench at the conclusion of the hearing on November 30, 2006, the transcript of which ruling is attached hereto and incorporated herein, the motion to compel arbitration filed by defendants Original Participating Manufacturers and the joinder therein filed by defendants Certain Subsequent Participating Manufacturers is GRANTED. Proceedings on the Motion of the State of Tennessee for Declaratory Order and Enforcement Order are STAYED pending completion of the arbitration.

ENTERED this \_\_\_\_ day of December, 2006.

  
Chancellor Claudia Bonnyman

Approved for Entry:

  
Linda A. Ross (BPR # 4161)  
Deputy Attorney General  
Office of the Attorney General  
P.O. Box 20207  
Nashville, TN 37202  
(615) 741-1771  
Fax: (615) 532-1120  
E-mail: Linda.Ross@state.tn.us

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been sent by first-class mail, postage prepaid, on the 7th day of December , 2006, to the following:

John A. Lucas  
HUNTON & WILLIAMS  
2000 Riverview Tower  
900 South Gay Street  
Knoxville, TN 37902  
(865) 549-7750  
*Attorney for Philip Morris USA Inc.*

James M. Doran, Jr. *(Via facsimile)*  
Mark Pickrell  
WALLER LANSDEN DORTCH & DAVIS  
Nashville City Center  
511 Union Street, Suite 2700  
Nashville, TN 37219  
(615) 850-8843  
(615) 850-8913  
*Attorneys for R.J. Reynolds Tobacco Company,  
and Lorillard Tobacco Company*

Samuel D. Lipshie  
BOULT, CUMMING, CONNERS, BERRY PLC  
1600 Division Street  
Suite 700  
Nashville, TN 37203  
(615) 252-2332  
*Attorney for Commonwealth Brands, Inc.  
Compania Industrial de Tabacos Monte Paz, SA,  
Daughters & Ryan, Inc.,  
Farmers Tobacco Co. Of Cynthiana, Inc.,  
House of Prince A/S,  
Japan Tobacco International U.S.A., Inc.,  
King Maker Marketing, Inc.,  
Kretek International, Inc.,  
Liberty Brands, LLC, Liggett Group LLC,  
Peter Stokkebye Tobaksfabrik A/S,  
P.T. Djarum, Santa Fe Natural Tobacco Company, Inc.,  
Sherman 1400 Broadway N.Y.C., Inc.,  
Top Tobacco, L.P., Vibo Corporation d/b/a General Tobacco,  
Virginia Carolina Corporation, Inc.,  
And Von Eicken Group.*

OF COUNSEL:

Kenneth L. Chernof  
HELLER EHRMAN LLP  
1717 Rhode Island Avenue, NW  
Washington, D.C. 20036  
(202) 912-2722  
*Attorney for Philip Morris USA, Inc.*

Thomas J. Frederick  
WINSTON & STRAWN LLP  
35 W. Wacker Drive  
Chicago, Illinois 60601-9703  
(312) 558-7497  
*Attorney for Philip Morris USA, Inc.*

Edwin L. Fountain  
JONES DAY  
51 Louisiana Avenue, NW  
Washington, D.C. 20001-2113  
(202) 879-7645  
*Attorney for R.J. Reynolds Tobacco Company*

Gayle Rosenstein  
Geron Gadd  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, N.Y. 10153  
(650) 802-3111  
(212) 310-8180  
*Attorneys for Lorillard Tobacco Company*

Robert J. Brookhiser  
Elizabeth McCallum  
HOWREY LLP  
1299 Pennsylvania Avenue, NW  
Washington, D.C. 20004  
(202) 383-7336  
*Attorneys for Certain Subsequent Participating Manufacturer Defendants*

Martin J. Smolik, Jr., President  
ANDERSON TOBACCO COMPANY  
5327 West First Street  
Greeley, CO 90634

Roberto F. Fleitas, Esq.  
CANARY ISLAND CIGARS COMPANY  
782 N.W. Lejeune Road, Suite 530  
Miami, FL 33126

Monika Horvathova  
CHANCELLOR TOBACCO COMPANY, UK, Ltd.  
1b Alpha Business Park  
Whitehouse Road  
Ipswich  
Suffolk IP15LT  
England

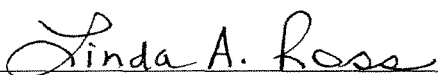
Sanjay Patel  
DHANRAJ IMPORTS INC.  
11731 Sterling Avenue, Suite F  
Riverside, CA 92503

John S. Chen  
INTERNATIONAL TOBACCO GROUP (LAS VEGAS) INC.  
6340 S. Sandhill Road  
Suite 8  
Las Vegas, NV 89120

Dominic Chu, President  
KONCI G & D MANAGEMENT GROUP (USA) INC.  
231 Grand Street, Suite 3F  
New York, NY 10013

Daisy P. Arce  
PACIFIC STANFORD MANUFACTURING CORPORATION  
6805 Ayala Avenue  
Makati City,  
1227 Philippines

William Hunter, Jr.  
WIND RIVER TOBACCO COMPANY  
Stoll, Keenon & Park  
2650 AEGON Center  
400 West Market Stret  
Louisville, KY 40202

  
\_\_\_\_\_

2006 DEC 11 PM 4:09  
IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE  
DAVIDSON COUNTY, TENNESSEE

STATE OF TENNESSEE, by and  
through Paul G. Summers,  
Attorney General and  
Reporter of the State of  
Tennessee,

Plaintiff,

Vs.

Case No. 98-3776-1

BROWN & WILLIAMSON TOBACCO  
CORPORATION; LIGGETT GROUP,  
INC.; LORILLARD TOBACCO  
COMPANY; PHILIP MORRIS,  
INCORPORATED; R. J. REYNOLDS  
TOBACCO COMPANY; UNITED  
STATES TOBACCO COMPANY;  
UNITED STATES TOBACCO  
MANUFACTURING COMPANY, INC.;  
and UNITED STATES TOBACCO  
SALES AND MARKETING COMPANY,  
INC.,

Defendant.

---

Excerpted Transcript of the Proceedings  
Before the Honorable Claudia Bonnyman  
**Findings of the Court**  
November 30, 2006

---

Keith R. Lemons, RPR, CRR  
ACCURATE COURT REPORTING  
Fall School Business Center  
1130 Eighth Avenue South, Suite 400  
Nashville, TN 37203  
(615) 244-DEPO or 244-3376

COPY

A P P E A R A N C E S

For the Plaintiff: Linda A. Ross, Esquire  
Leslie Bridges, Esquire  
Deputy Attorney General  
Healthcare Division  
2nd Floor Cordell Hull  
Building  
425 5th Avenue North  
Nashville, TN 37202

For the Defendant Philip Morris USA: John A. Lucas, Esquire  
Hunton & Williams  
200 Riverview Tower  
900 South Gay Street  
Knoxville, TN 37902

-and-

Thomas J. Frederick  
Winston & Strawn LLP  
35 Wacker Drive  
Chicago, IL 60601-9703

For Certain Subsequent Participating Manufacturer Defendants: Samuel D. Lipshie, Esquire  
Boult, Cummings, Connors & Berry, PLC  
1600 Division Street  
Suite 700  
Nashville, TN 37219

-and-

Elizabeth McCallum, Esquire  
Howrey LLP  
1299 Pennsylvania Avenue NW  
Washington, D. C. 20004

For R. J. Reynolds  
Tobacco Company and  
Lorillard Tobacco  
Company:

James M. Doran, Esquire  
Waller Lansden Dortch & Davis  
2300 Nashville City Center  
511 Union Street  
Nashville, TN 37219

-and-

Cecilia A. Silver, Esquire  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153



1 (The above-referenced cause came on to be  
2 heard before the Honorable Claudia Bonnyman, November  
3 30, 2006, beginning at 9:00 a.m. The following  
4 proceedings were had, to-wit:) *At the 9:00 a.m. proceeding, the*  
5 *Court expressed the opinion that interlocutory appeal could*  
*reduce* (Begin Excerpt.) *delay and expense. CB*

6 THE COURT: Please be seated. All right. The  
7 Court, after hearing argument, took a number of hours to  
8 *finish reading B*  
~~completely read~~ all of the papers that had been filed  
9 and then asked the parties, the lawyers, to reconvene at  
10 4:00. It is now 4:10, and the Court's now ready to  
11 announce its decision.

12 This matter comes before the Court on the  
13 plaintiff's application and action for declaratory order  
14 under the Master Settlement Agreement and the  
15 defendants' motion to compel arbitration and to stay the  
16 litigation. The Court has reviewed the motions, the  
17 pleadings, the exhibits, the briefs, the entire record.  
18 The matter was argued on 11/30/2006.

19 The Court grants the defendants' motion to  
20 compel arbitration and stays the litigation filed by the  
21 Tennessee Attorney General, based upon the following  
22 findings.

23 In 1998, the 46 states, the District of  
24 Columbia the Commonwealth of Puerto Rico and four  
25 territories, called the "Settling States," entered into

1 a Master Settlement Agreement, the "MSA," with four  
2 major tobacco companies which were known as the Original  
3 Participating Manufacturers, the "OPMs." Over 40  
4 additional tobacco companies later joined the MSA, and  
5 these companies are referred to as the Subsequent  
6 Participating Manufacturers, that is, "SPMs."  
7 Collectively, the tobacco companies are referred to as  
8 the Participating Manufacturers, or "PMs."

9 In return for a release by the Settling States  
10 of certain claims against the PMs, the PMs agreed to  
11 make certain annual payments to the Settling States to  
12 fund educational foundations devoted to educating the  
13 public about the dangers of tobacco use and to adhere to  
14 certain restrictions on their advertising and marketing  
15 practices.

16 The MSA provides for an amount to be paid by  
17 the PMs to the Settling States each year. These  
18 payments, in each Settling State's share, "allocable  
19 share," is determined by an independent auditor  
20 according to the terms of the MSA.

21 There are a number of adjustments that the  
22 independent auditor can take into account in determining  
23 each Settling State's share. At dispute in this matter  
24 is the Nonparticipating Manufacturer, "MPN," adjustment.  
25 An NPM is a tobacco manufacturer that does not

1 participate in the MSA.

2           The OPMs were concerned that such NPMs would  
3 gain a competitive advantage in the marketplace due to  
4 restrictions placed on PMs that did not apply to the  
5 NPMs. To address this concern, the MSA encourages the  
6 NPMs to join the MSA and provide NPM adjustments under  
7 certain circumstances which can reduce the amount the  
8 PMs are required to pay to the Settling States each year  
9 and which reduce the damage done to the PMs by  
10 competition from the NPMs.

11           The Settling States require that all NPMs  
12 selling cigarettes in the state place a certain amount  
13 of money for each cigarette sold into an escrow account.  
14 This requirement is effectuated through a qualifying  
15 statute, which all Settling States enacted.

16           Payments into escrow accounts are not required  
17 if the tobacco company joins the MSA as a Subsequent  
18 Participating Manufacturer. To compensate for any  
19 unfair advantage that the NPMs might gain over the PMs,  
20 because they're not making payments under the MSA, an  
21 NPM adjustment was created.

22           In order for the adjustment to apply, the  
23 independent auditor must make three determinations:  
24 One, the PM suffered a loss in market share; two, the  
25 PM's participation in the MSA was a significant

1 factor -- that is, otherwise known as "significant  
2 factor determination" -- in the loss of market share;  
3 and, three, that the Settling State at issue did not  
4 have a qualifying statute in full force and effect or  
5 did not diligently enforce the statute during the year  
6 preceding the year of payment.

7           The independent auditor, in calculating the  
8 2004 payment, determined a market share loss for 2003.  
9 Tennessee asserts that some of the PMs refused to pay  
10 the full amount owing in April of 2006, and reduced  
11 their MSA payments based on an offset from the NPM  
12 adjustment not yet recognized by the independent  
13 auditor.

14           On March 1, 2006, a significant factor  
15 determination was issued by The Firm, a group of  
16 economic consultants. Pursuant to the MSA, satisfying  
17 the second requirement for a 2003 NPM adjustment, the  
18 independent auditor did not find that any of the  
19 Settling States had failed to enact or diligently  
20 enforce qualifying statutes.

21           The third condition to an NPM adjustment  
22 application for 2003 was not found, but the independent  
23 auditor, in examining the diligent enforcement of  
24 qualifying statutes by Settling States, presumed such  
25 enforcement if the state had enacted a qualifying

1 statute.

2           The OPMs objected to the finding of  
3 presumed -- I'm sorry -- the PMs objected to the finding  
4 of presumed diligent enforcement, based on passage of a  
5 qualifying statute. The PMs assert that the entire  
6 issue of diligent enforcement must be decided in  
7 arbitration, because the PMs, in effect, dispute that  
8 any of the states are diligently enforcing their  
9 qualifying statutes and disputes the independent  
10 auditor's decision, to date, that no NPM adjustments are  
11 due.

12           As the Court stated earlier, the PMs believe  
13 an adjustment should have been made for 2003. The State  
14 believes the PMs withheld a portion of the amount due in  
15 2006, depositing the monies in escrow, based upon the  
16 NPM adjustment allegedly due.

17           The plaintiff then brought this action,  
18 seeking a declaration that it has diligently enforced  
19 its qualifying statute during the entire calendar year  
20 of 2003, and an order prohibiting the PMs from  
21 withholding any portion of Tennessee's share due in  
22 April 2006.

23           The defendants then filed a motion to compel  
24 arbitration of this dispute and to either dismiss or  
25 stay litigation.

1           The decision announced by the Court addresses  
2 the issue of whether there is a dispute and whether the  
3 dispute arises by the work to be done by the independent  
4 auditor. State courts, per the MSA enforcement  
5 provision, have exclusive jurisdiction for the purposes  
6 of implementing and enforcing the MSA, as do such  
7 Settling States, and except as provided in Subsections  
8 IX(d), XI(c), and XVII(d), and Exhibit O, shall be the  
9 only court to which disputes under this agreement or the  
10 consent decree are presented as to such Settling States.  
11 MSA Section VII(a) -- that is MSA Section VII(a).

12           The MSA further provides that enforcement is  
13 to be had in state courts, except as provided in  
14 Subsections IX(d), XI(c), VII(d), and Exhibit O, with  
15 respect to disputes, alleged violations, or alleged  
16 breaches within such Settling State. That's at MSA  
17 Section VII(c).

18           Tennessee courts, therefore, have exclusive  
19 jurisdiction over the implementation and enforcement of  
20 the MSA and consent decree as they relate to the State  
21 of Tennessee as a Settling State. The parties, however,  
22 have agreed that the courts do not have jurisdiction  
23 under the explicit terms of the MSA in those areas  
24 covered by Sections IX(d), XI(c), VII(d), and Exhibit O.

25           Section XI is captioned "Calculations,



1 Disbursements, and Disbursements of Payments."

2 Subsection XI(c) states, "Resolution of  
3 disputes: Any dispute or controversy or claim arising  
4 out of or relating to calculations before, by, or any  
5 determination made by the independent auditor,  
6 including, without limitation, any dispute concerning  
7 the operation or application of any adjustments,  
8 reductions, offsets, carry-forwards and allocations  
9 described in Subsection IX(j) or Subsection XI(j) shall  
10 be submitted to binding arbitration before a panel of  
11 three mutual (sic) arbitrators, each of whom shall be a  
12 former Article III federal judge."

13 Subsection IX is captioned "Payments."  
14 Subsection IX(j) is entitled, "Order of Application of  
15 Allocations, Offsets, Reductions, and Adjustments." It  
16 contains the following: "The NPM adjustment shall be  
17 applied to the results of clause fifth, pursuant to  
18 Subsections IX(d)(1) and IX(d)(2). That's MSA Section  
19 IX(j) (6th.)

20 Subsection IX(d) contains the calculation  
21 provisions for the NPM adjustment. Subsection IX(d)(2)  
22 addresses the determination of diligent enforcement of  
23 qualifying statutes by Settling States.

24 The Court also reviewed Subsection XI(d)(2) of  
25 the MSA. That section states: "The preliminary

1 calculations which the independent auditor must deliver  
2 to each noticed party are described as" -- in quotes --  
3 "detailed preliminary calculations of the amount due  
4 from each participating manufacturer and of such amount  
5 allocable to each entity for whose benefit such payment  
6 is to be made, showing all applicable offsets,  
7 adjustments, reductions, and carry-forwards, and setting  
8 forth all the information on which the independent  
9 auditor relied in preparing such preliminary  
10 calculations."

11           The Court finds that the language of the MSA  
12 provides that disputes related to determinations made by  
13 the independent auditor are subject to arbitration if  
14 the dispute relates to an NPM adjustment. The  
15 determination of the independent auditor includes the  
16 application of the NPM adjustment, which the Court finds  
17 means "using" -- which the Court understands to mean  
18 "using the adjustment." This would be a technical or  
19 mechanical decision.

20           And Subsection XI(d)(2) states that the  
21 independent auditor also decides whether the NPM  
22 adjustment is applicable. This is not a mechanical or  
23 technical decision, but a substantive decision.  
24 Consequently, the Court finds the independent auditor  
25 decides, rightly or wrongly, not just how the NPM



*The Court was also persuaded by the making of the 12  
arbitration panels, B  
three former judges.*

1 adjustment applies, but if it applies.

2 Diligent enforcement questions are not removed  
3 from the independent auditor's decision-making and  
4 placed with the Court.

5 Several of the courts based -- several of the  
6 courts, finding that arbitration was necessary, based  
7 their decision on the need for uniformity. And those  
8 courts found or assumed or understood there would be one  
9 arbitration panel. However, the language of the MSA  
10 does not point to one arbitration panel for all diligent  
11 enforcement decision-making for the 2003 year.

12 It may be that the PMs will choose the same  
13 arbitrator for all of its arbitrations regarding  
14 diligent enforcement; however, and in the context of  
15 having one arbitration panel which will address all of  
16 the states' diligent enforcement and compare all the  
17 states' efforts to diligently enforce the qualifying  
18 statutes, it is somewhat disturbing to think that the  
19 PMs, without receiving any information on the subject,  
20 assume that none of the states have been diligently  
21 enforcing the qualifying statutes.

22 The Court is not aware of language in the MSA  
23 and has not been convinced by the arguments and the  
24 papers and the record supplied by the defendants in this  
25 case that one arbitration panel is contemplated. The

1 Court is not -- the Court also cannot understand, and  
2 does not understand that the PMs have decided that they,  
3 that the PMs, will contest and require proof and  
4 arbitration on each and every state's efforts to  
5 diligently enforce its statute.

6 Consequently, the idea and the fear that there  
7 will be 52 arbitrations seems like an unnecessary  
8 conclusion, because several of the other courts have  
9 expressed -- have expressed the finding -- actually made  
10 findings that one arbitration panel will be used to  
11 address, globally, all of the diligent enforcement  
12 issues.

13 This Court -- and given the argument of the  
14 PMs that this has to be done this way, otherwise there  
15 will be chaos, and there must be a standard way of  
16 analyzing all of the different states' compliance --  
17 that is, compliance with a provision that they must  
18 diligently enforce the qualifying statute -- this Court  
19 finds -- probably should make a finding on the matter.

20 And so to the extent that the Court should  
21 make a finding on the matter, the Court finds that it  
22 seems wise and efficient to have an arbitration panel --  
23 maybe the parties, PMs and the -- would choose one  
24 arbitrator, would hold their arbitrations -- and the  
25 Court doesn't have the power to decide this -- but would

1 hold their arbitrations in the various states where --  
2 states where the PMs have reason to believe that the  
3 statutes have not been diligently enforced.

4 And, surely, the PMs are not making the global  
5 decision at this point that there are no states  
6 diligently enforcing their statutes. And so the idea  
7 that this is going to be a terrible thing with a whole  
8 lot of -- 52 arbitrations -- seems, really, to have  
9 no -- it has no basis in this record that's been  
10 developed so far.

11 So, Lawyers, if there's no other housekeeping  
12 issue or anything I've forgotten that I should address,  
13 I'll be glad to hear you.

14 MR. FREDERICK: Nothing else, Your Honor.

15 MS. McCALLUM: Nothing from the SPMs, Your  
16 Honor.

17 THE COURT: So we are now adjourned.

18 (End Excerpt.)

19 (Hearing proceedings concluded at 4:26 p.m.)  
20  
21  
22  
23  
24  
25

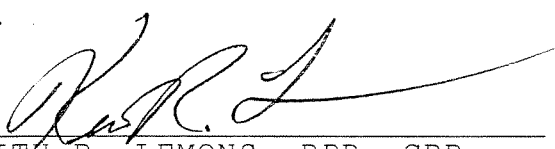
1 STATE OF TENNESSEE )  
2 )  
COUNTY OF WILLIAMSON)

3 I, KEITH R. LEMONS, Registered Professional  
4 Reporter and Notary Public in and for the State of  
5 Tennessee at Large,

6 DO HEREBY CERTIFY that the foregoing proceedings  
7 were taken at the time and place set forth in the  
8 caption thereof; the witness therein was duly sworn on  
9 oath to testify the truth; the proceedings were  
10 stenographically reported by me in shorthand; and the  
11 foregoing proceedings constitute a true and correct  
12 transcript of said proceedings to the best of my  
13 ability.

14 I FURTHER CERTIFY I am not a relative or employee  
15 or attorney or counsel of any of the parties hereto, nor  
16 a relative or employee of such attorney or counsel, nor  
17 do I have any interest in the outcome or events of this  
18 action.

19 IN WITNESS WHEREOF, I have hereunto affixed my  
20 signature this 1st day of December, 2006, at Nashville,  
21 Davidson County, Tennessee.

22   
23 KEITH R. LEMONS, RPR, CRR  
24 Notary Public at Large  
State of Tennessee

25 My commission expires: June 15, 2009